

specification at page 3, lines 29-36. Specifically, the use of at least one hot or cold formed projection provides the advantage of retaining a chip in a storage well in a fashion that would not affect the immunoassay, which is advantageous over alternative designs. The Office Action is thus incorrect where it fails to recognize the advantages associated with Applicants' invention, as recited in at least independent claims 17 and 22.

At pages 3 and 4, the Office Action supports its assertion regarding this feature by referring to MPEP §2144.04, which is asserted to state that the selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results. As explained above, new or unexpected results are described in Applicants' specification, at page 3, lines 29-36. Moreover, it is not clear to Applicants where in MPEP §2144.04 support is found for the Office Action's specific assertion, since MPEP §2144.04 does not appear to support the assertion put forth in the Office Action. Rather, MPEP §2144.04(VI)(C) affirms that the order of the claimed elements can be rearranged and result in a patentable invention: "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the referenced device." MPEP §2144.04(VI)(C) thus contradicts the Office Action's assertion that the order of performing process steps is prima facie obvious. It is respectfully submitted that the MPEP thus supports that the claimed arrangement of process steps is not prima facie obvious, and that the Examiner must provide a motivation or reason for any rearrangement of process steps disclosed in the applied prior art.

With regard to the rejection of claims 17-19 and 22-38, Applicants respectfully bring to the Examiner's attention that the pending claims are method claims and that the Office Action bases its rejection on an apparatus disclosed in the applied references. The rejection is

thus improper, and should be withdrawn because it fails to set forth how the methods recited in at least claims 17 and 22 are in anyway taught by the applied references, as those applied references concern an apparatus and not a method.

Matkovich in view of Westhall and McManus thus fails to disclose a method of constructing an assay assembly involving the steps of providing a storage well with the base and side walls, inserting a chip into the storage well, and thereafter providing at least one hot or cold formed projection on the inner surface of the side wall to retain the chip in the storage well, as generally recited in independent claims 17 and 22. Specifically, Matkovich, Westhall, and McManus do not disclose any method of constructing an assay assembly, and none of the references disclose a method of providing at least one hot or cold formed projection on the inner surface of a storage well to retain a chip in the storage well.

As asserted previously, neither Matkovich nor Westhall disclose inserting a chip and thereafter providing at least one hot or cold formed projection on the inner surface of the side wall to retain the chip in the storage well. Instead, Matkovich discloses inward projection 72 which is formed around the inner circumference of the well, when the well is formed. See Matkovich at col. 10, lines 12-37. Westhall does not disclose anything in regard to the formation of at least one hot or cold formed projection on the inner surface of a side wall. Matkovich and Westhall also do not disclose a chip being press fit past at least one hot or cold formed projection.

McManus fails to remedy the deficiencies of Matkovich and Westhall because McManus regards an entirely irrelevant art. McManus regards the use of magnets in regard to a motor housing, and a person of ordinary skill would not look to the teachings of McManus to modify Matkovich or Westhall. The Office Action at page 3 fails to provide any motivation as to why a person of ordinary skill would look to McManus in regard to a method of constructing an assay assembly.

For all of the reasons set forth above, and as set forth in the record, Matkovich in view of Westhall and McManus fail to disclose all of the features recited in independent claims 17 and 22, as well as the additional features recited in the dependent claims thereof. It is respectfully requested that the rejection be withdrawn.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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